

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                    |   |               |
|------------------------------------|---|---------------|
| KENTUCKY PUBLIC SERVICE COMMISSION | ) |               |
|                                    | ) |               |
| VS.                                | ) | CASE NO. 9621 |
|                                    | ) |               |
| NORTH MARSHALL WATER DISTRICT      | ) |               |

O R D E R

On September 28, 1986, Mr. and Mrs. Jerry Wommack, Gilbertsville, Kentucky, filed a complaint against the North Marshall Water District ("North Marshall") for failure to provide them with a residential water service connection in accordance with its tariff. North Marshall has refused to do so because it considers a "Construction Cost Sharing Contract" to be applicable to the Wommacks or to any other party that obtains service from the water main along Engine Road in Marshall County.

A public hearing was held in the offices of the Commission in Frankfort, Kentucky, on August 6, 1986, to provide all parties of interest an opportunity to be heard. Appearing at the hearing and providing testimony for the complainants were Jerry Wommack and Mel Seiler as a co-complainant. Appearing and providing testimony for North Marshall were Roy C. Brien, chairman of the District, and William C. Johnson, treasurer.

DISCUSSION

The 3-inch water main fronting the Wommacks' (now Seiler's) property extends along Engine Road near Kentucky Lake in Marshall

County. Construction of this main ("Engine Road") was completed by a private contractor in 1980. Its \$4,500 construction cost was borne by the four property owners ("Participants") served by the main with a contribution of \$600 from North Marshall.

North Marshall admitted at the hearing that it was not complying with the Commission's regulations for extension of service set out in Section 12 of 807 KAR 5:066. Mr. Brien and Mr. Johnson testified that North Marshall had followed its own extension policy since at least 1967.

The extension policy followed by North Marshall proposes to equalize the amount paid by each Participant in an extension regardless of the number of Participants. The contract for the Engine Road extension states that additional participants will be charged a fee based on the cost of construction divided by the total number of participants on the extension. The excess, above actual installation cost of each additional connection, is to be refunded prorata to the original participants until their contributions each equal the \$300 connection fee set out in North Marshall's tariffs. Based on this contract North Marshall determined that the connection fee for the Wommacks was \$630.

Mr. Brien testified that he understood that the extension policy had been approved by the Commission, while Mr. Johnson stated that he was not aware that the policy needed to be approved by the Commission. The Commission's regulations (Section 13 of 807 KAR 5:011) require every utility to file true copies of all special contracts entered into which set out rates, charges or conditions of service not included in its general tariff. No

evidence was presented to show that North Marshall had complied with these filing requirements. North Marshall did enter in the record copies of two special contracts relative to the complaint in this proceeding. No evidence was presented to show that North Marshall had been granted Commission approval to deviate from the requirements of either 807 KAR 5:066 (12) or 807 KAR 5:011 (13). North Marshall requested at the hearing that it be granted a deviation from the regulations for retroactive approval of its extension policy and for approval of its future use of the policy.

The rules and regulations (807 KAR 5:006, Section 5) provide:

**Special Rules or Requirements.** (1) No utility shall establish any special rule or requirement without first obtaining the approval of the commission upon proper application. (2) A customer who has complied with the regulations of the commission shall not be denied service for failure to comply with the rules of the utility which have not been made effective in the manner prescribed by the commission.

#### FINDINGS AND ORDERS

The Commission, after consideration of the evidence of record and being advised, is of the opinion and finds that:

1. Mr. and Mrs. Jerry Wommack applied for water service from North Marshall in July 1982, a date precedent to the date of North Marshall's request for deviation from the Commission's regulations on extension of service. Therefore Mr. and Mrs. Wommack should be provided service in accordance with the tariffs in effect on the date of their application.

2. The Engine Road Main was completed by North Marshall in 1980 at a construction cost of \$4,500. This cost was shared

equally by the four applicants for service with a contribution of \$600 by North Marshall.

3. The construction cost sharing contracts filed by North Marshall at the August 6, 1986, hearing do not conform to the Commission regulations on extension of service, could lead to different de facto connection fees for each new extension, would create an extensive accounting and record keeping requirement and therefore should not be approved.

4. All reimbursements to the original contributors on the Engine Road Main extension should be made in accordance with Section 12 (2) of 807 KAR 5:066.

5. North Marshall has not properly applied for approval of a deviation from the Commission's regulations set out in Section 12 of 807 KAR 5:066 on extension of service.

IT IS THEREFORE ORDERED that:

1. North Marshall shall provide water service to Mel Seiler, the current owner of the Wommack property on Engine Road, in accordance with the tariffs in effect in 1980 within 30 days of the date of this Order.

2. The retroactive approval sought by North Marshall for a "Cost Sharing Policy" be and it hereby is denied.

3. North Marshall shall refund to the original contributors on the Engine Road Main extension the cost of 50 feet of the extension for each additional customer added thereto in accordance with Section 12 (2) of 807 KAR 5:066.

4. North Marshall's request for deviation from the Commission regulations governing extension of service set out in Section 12 (2) of 807 KAR 5:066 be and it hereby is denied.

5. North Marshall shall obtain approval of this Commission in accordance with its rules and regulations prior to establishing any special rule or requirement.

Done at Frankfort, Kentucky, this 11th day of September, 1986.

PUBLIC SERVICE COMMISSION

*Richard D. Wernoff*  
Chairman

*[Signature]*  
Vice Chairman

*Spencer Williams*  
Commissioner

ATTEST:

\_\_\_\_\_  
Executive Director